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IN THE EIGHTH JUDICIAL DISTRICT COURT, DUCHESNE COUNTY

STATE OF UTAH

IN THE MATTER OF THE GENERAL DETERMINATION OF ALL THE RIGHTS TO THE USE OF WATER, BOTH SURFACE AND UNDERGROUND, WITHIN THE DRAINAGE AREA OF THE UINTA BASIN IN UTAH	MEMORANDUM IN SUPPORT OF STATE ENGINEER'S MOTION FOR ORDER OF DISTRIBUTION
	Civil No. 560800056CV
	JUDGE EDWIN T. PETERSON

Kent L. Jones, Utah State Engineer, by and through counsel, respectfully moves this Court for an Order of Distribution to govern the distribution of water on the combined Duchesne River and Strawberry River system.

I INTRODUCTION

During years when the water supply in the combined Duchesne and Strawberry River system has been insufficient to supply existing water rights, water has been distributed pursuant to orders

from this Court. These orders have allowed the interim distribution of water in this combined river system during the pendency of the Uinta Basin General Adjudication. They do not prejudice the claims of the parties in any subsequent proceedings in the general adjudication. This Motion seeks an Order governing water distribution for the 2011 irrigation season and for subsequent years.

II ARGUMENT

A. UTE INDIAN TRIBE WATER RIGHTS AND THE GENERAL ADJUDICATION

In the general adjudication, a number of issues related to the water right claims of the Ute Indian Tribe remain unresolved. In about the 1960s, the State of Utah and the Ute Indian Tribe undertook to negotiate a compact that would quantify the Tribe's water rights and resolve various outstanding issues. The State of Utah agreed not to join the United States or the Ute Indian Tribe in the Uinta Basin General Adjudication until the compact was ratified. In 1980, the Utah Legislature ratified a proposed compact. In approximately 1992, the State and the Tribe negotiated a revised compact. The United States Congress has ratified the revised compact by legislation. The Tribe, however, has not yet ratified the revised compact by referendum election. The State and the Tribe continue to work toward full ratification of the compact. After the Ute Tribe has ratified the revised compact, the Utah Legislature will consider it for re-ratification. When the revised compact is fully ratified, the State Engineer will proceed with the general adjudication in this area. Until that time, however, the water rights on the Strawberry and Duchesne River systems will not be fully adjudicated. The Distribution Order allows the State Engineer to administer and distribute the waters of the Strawberry and Duchesne Rivers while the general adjudication is pending in those river basins.

B. ON-GOING DISTRIBUTION ORDER FOR 2011 AND SUBSEQUENT YEARS

The flows in the drainage areas of the Duchesne and Strawberry Rivers in 1982, 1983, 1984, 1986, 1997, 1998, and 1999 were sufficient to satisfy water rights in the basin without a distribution schedule. In 1995, even though the Court issued a distribution order, there was enough late spring precipitation and cool weather to maintain river flows, and the River Commissioner did not impose the delivery schedule. In 2005, 2006, 2007, 2008, 2009, and 2010, although it appeared there would be sufficient water, the water users requested that the State Engineer submit a distribution order to the Court so it would be in place in case it was needed. In 2007, the river commissioner distributed water according to the distribution order. This year, it appears that it may not be necessary to regulate the system under a distribution order during the 2011 irrigation season. Nevertheless, the State Engineer and the water users agree that the distribution order should be in place in case regulation becomes necessary.

A pattern has thus developed over the last ten years or so where the water users and the State Engineer agree that the distribution order should be in place even when the snowpack appears sufficient to provide water through the irrigation season without regulation. This year, the State Engineer and the water users have agreed to request that the Court approve the Distribution Schedule on an on-going basis rather than for only the 2011 irrigation season.

The proposed Order includes provisions to protect the rights of the water users. The schedule would be approved for subsequent years without additional court order. Any amendments to the distribution schedule would have to be approved by the Court, which would include the standard notice procedure that has been in place for the annual orders. Any water user whose water rights

might be affected could at any time file an objection to the schedule, as has been provided in the annual orders. Finally, the Order and the Distribution Schedule are not binding on any water users or on the State Engineer in the general adjudication.

The State Engineer, with the consent and support of the water users, therefore requests that the Distribution Order and Schedule be on-going until amended or vacated by the Court.

C. DISTRIBUTION SCHEDULE FOR DUCHESNE AND STRAWBERRY RIVERS

Prior to 1989, all water users along the respective river systems received water according to a single, uniform distribution schedule that was prepared by the State Engineer and adopted by the Court. After 1989, the State Engineer modified the distribution schedule based on discussions with the water users and new technical information. In 2003, the State Engineer further modified the distribution schedule after discussions with the water users. Those modifications are explained in detail in the Distribution Schedule, Duchesne - Strawberry River (Distribution Schedule), attached as Exhibit A to the proposed Order. In 2009, the water users requested that the descriptions of Zones I and III be amended slightly to make them more accurate. The Distribution Schedule provides that the River Commissioner can make a determination, based on current climatic conditions and historical water needs, to administer Zone I under either Schedule A or Schedule B, and to administer Zone II under either Schedule B or Schedule C. Zone III will be administered under Schedule C as in previous years. The Distribution Schedule will allow the River Commissioner and the water users to begin regulated distribution of water either earlier or later each year, depending on the seasonal weather outlook and the water needs within each zone.

The Distribution Schedule has been slightly modified to include the Red Creek drainage area.

The Distribution Schedule includes a new zone, Zone IV, which covers irrigated acreage in the Red Creek drainage to its confluence with Currant Creek. Zone IV will administered under two new delivery schedules, Schedule D and Schedule E. The Duchesne River Commissioner will determine which schedule will be used during a given year, depending on the snowpack and water supply.

D. IRRIGATION DUTY SHOULD BE FOUR ACRE-FEET PER ACRE FOR ZONES I, II, AND III, AND THREE ACRE-FEET PER ACRE FOR ZONE IV.

Based on the Court's ruling on the 1990 Interim Distribution Order and the State Engineer's technical analysis, the State Engineer has concluded that a four (4) acre-feet per acre irrigation duty is reasonable and proper in Zones I, II, and III. The State Engineer therefore recommends that the Court adopt an irrigation duty of four (4) acre-feet per acre for these zones. This is the same irrigation duty the Court has adopted since at least 1980. Zone IV, the Red Creek drainage from its headwaters to its confluence with Currant Creek, should be administered with an irrigation duty of 3.0 acre-feet per acre.

E. STORAGE RESERVOIRS MAY BE USED FOR REGULATION OF FLOWS

In 1990 and 1991, the State Engineer held discussions with representatives of the United States Bureau of Reclamation and the Central Utah Water Conservancy District (CUWCD) regarding the use of Starvation Reservoir as a regulating reservoir for direct-flow water rights from the rivers and streams. By agreement with the CUWCD, water users have been allowed to use Starvation Reservoir to regulate their water flows on a short-term basis (two weeks or less) during the time they harvest their crops. This arrangement allows the River Commissioner, at the request of the water users, to hold back the allotted water when the water users are harvesting crops and cannot use it and

to resume delivery of the water when the harvest is completed. The water users can thus use their water more efficiently, and they can use their full allotment of four acre-feet per acre per year.

The State Engineer requests that the Court allow, by order, this arrangement for short-term regulation through Starvation Reservoir, Red Creek Reservoir, and Midview Reservoir at any time during the irrigation season. The short-term regulation would be limited to two weeks or less, but could occur any time during the irrigation season. The conditions of such regulation are that the water users make appropriate arrangements with the owner of the respective reservoir (Starvation Reservoir, Red Creek Reservoir, or Midview Reservoir), that the River Commissioner administer such regulation and distribution, that other water rights are not impaired, and that the water users have adequate measuring devices as approved by the State Engineer.

F. THE DISTRIBUTION ORDER DOES NOT PREJUDICE CLAIMS IN THE GENERAL ADJUDICATION

In the past, the Uintah Basin Irrigation Company has expressed concern that the continued entry of the interim distribution orders may be the basis for some form of estoppel to their claim for a higher duty of water, even though the orders state that they are without prejudice to such claims. The State Engineer emphasizes that nothing in this or in past orders is intended to prejudice the eventual claims of any party in the general adjudication, including claims for a higher irrigation duty.

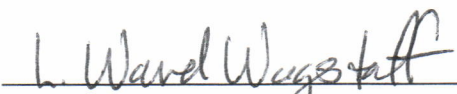
The State Engineer will serve copies of this Motion on interested parties to allow them to submit comments or objections prior to entry of the Order of Distribution. The Order also allows a water user to file an objection to the Distribution Schedule at any time.

III CONCLUSION

The State Engineer therefore respectfully moves this Court for an on-going Order of Distribution adopting the attached Distribution Schedule to govern the distribution of water on the Duchesne River and Strawberry River systems and directing the Duchesne River Commissioner to distribute water within those river systems according to the schedule.

Dated this 4th day of May, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the STATE ENGINEER'S MOTION FOR ORDER OF DISTRIBUTION, the MEMORANDUM IN SUPPORT OF STATE ENGINEER'S MOTION FOR ORDER OF DISTRIBUTION, and the proposed ORDER OF DISTRIBUTION were served by mailing, first class postage prepaid, this 4th day of May, 2011, to the following:

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A handwritten signature in cursive script, reading "Corrin M. Burnside", is written over a horizontal line.

